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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:20-cv-08570-JD

Hon. James Donato

**ADVERTISER PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO EXCLUDE
OPINION TESTIMONY OF DR.
CATHERINE TUCKER**

Hearing Date: June 20, 2024

Hearing Time: 10:00 a.m.

Courtroom 11, 19th Floor



**NOTICE OF MOTION AND MOTION TO EXCLUDE
OPINION TESTIMONY OF DR. CATHERINE TUCKER**

PLEASE TAKE NOTICE that on June 20, 2024, at 10:00 a.m., before the Honorable James Donato, of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California, Courtroom 11, 19th Floor, Advertiser Plaintiffs Affilious, Inc., Jessyca Frederick, Mark Berney, 406 Property Services, PLLC, Mark Young, and Katherine Looper, on behalf of themselves and all others similarly situated, will and now do move the Court for an order excluding paragraphs 165-70, 192, and 194-203 of the Advertiser Merits Report of Catherine Tucker, paragraph 37 of the Advertiser Merits Rebuttal Report of Catherine Tucker, and related testimony.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, all filed supporting declarations and exhibits, the records, pleadings, and other documents on file in this consolidated action, and any argument that may be presented at or before the hearing on this Motion.



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PRELIMINARY STATEMENT

Advertiser Plaintiffs respectfully move to exclude certain merits testimony of Defendant Meta Platform, Inc.’s (“Facebook”) expert Catherine Tucker. Dr. Tucker has opined that evaluating Facebook’s ad prices on a CPM¹ basis is flawed, and that [REDACTED] at Facebook during the Class Period—with [REDACTED]—offers no meaningful information regarding Facebook Ads’ product market or monopoly power. However, at deposition, Dr. Tucker admitted that *irrespective of ad type or advertiser goal*, “[REDACTED]” Ex. 1 (“Tucker Tr.”) 215:14-16, and further testified that [REDACTED] [REDACTED]” *id.* 201:1-6. At the same time, when pressed to unpack her own conception of what “price” means for a Facebook advertisement, Dr. Tucker testified that the relevant “price” was the [REDACTED] [REDACTED] *id.* 204:15-18, [REDACTED] that would depend on an advertiser’s [REDACTED] [REDACTED]” *id.* 207:13-208:5.

Dr. Tucker’s nebulous conception of “price”—created for litigation because Facebook’s actual metric for companywide ad pricing (CPM) shows [REDACTED] Facebook ad prices during the Class Period—is not (and could not) be tracked by Facebook, does not represent the sums actually paid to Facebook by ad purchasers, and does not match any widely-accepted understanding (commonsense, economic, or otherwise) of what the word “price” means. Dr. Tucker’s opinions and testimony based on this junk science conception of “price,” memorialized in paragraphs 165-70, 192, and 194-203 of her merits report and 37 of her merits rebuttal, should be excluded under *Daubert*.

BACKGROUND

A. Facebook’s Price Increases, CPM, and Dr. Williams’s Testimony

This is an antitrust case challenging Facebook’s monopolization of the United States Social Advertising Market, a distinct submarket of the overall market for online advertising in the United

¹ CPM stands for cost per mille—the cost per 1,000 impressions of an advertisement.

States. As relevant here, Advertiser Plaintiffs and Facebook have each designated economic experts concerning market definition, monopoly power, and price inflation. Advertiser Plaintiffs offer Dr. Michael Williams, and Facebook offers Dr. Catherine Tucker; each has submitted two merits expert reports in connection with the Advertiser Plaintiffs' case. *See* Ex. 2 ("Tucker Rpt."), Ex. 3 ("Tucker Rebuttal Rpt."), Ex. 4 ("Williams Rpt."), Ex. 5 ("Williams Rebuttal Rpt.")).

Facebook's ads, companywide, are sold through an auction. *See* Williams Rpt. ¶ 184; Ex. 6 (PALM-012438930) () at PALM-012438941. Facebook's ad tools offer advertisers a variety of ways to optimize their ad campaigns (for example, cost per click, cost per action, or cost per mille), *see* Williams Rpt. ¶¶ 181-96, and Facebook's " " , Ex. 6 at PALM-012438941. But eventually a given ad placement on a Facebook property must actually be sold, and that sale must actually have a price paid by the ad buyer. To solve this complexity, Facebook has . Williams Rpt. ¶¶ 183-96. Both parties' experts agree that Facebook's ads, . *See* Williams Rpt. ¶¶ 187-88; Tucker Tr. 215:14-16 (" "). It is also uncontested that Facebook itself . *See, e.g.*, Ex. 7 (PX 581 & 582) at PALM-014094556 (); Williams Rebuttal Rpt. ¶¶ 111.

Given that Facebook itself , Dr. Williams . *See* Williams Rpt. ¶¶ 200-208, 226-28. Dr. Williams analyzed the pricing mechanics of Facebook's ad auction— , *id.* ¶¶ 185-96, , *id.* ¶ 184—and concluded that

Williams Rpt. Fig. 16 (p. 93), *id.* ¶¶ 199-208, *id.* ¶¶ 226-28, Ex. 8 (“Williams Class Reply Rpt.”) ¶¶ 80-83; Williams Rebuttal Rpt. ¶¶ 110-11, 118-24.

B. Dr. Tucker’s Merits Reports and Deposition Testimony

On January 12, 2024, Dr. Tucker served a merits expert report arguing that Dr. Williams’s analysis to identify a price increase and otherwise evaluate price-related trends in Facebook’s ads business was flawed. *See* Tucker Rpt. ¶¶ 165-70, 192, 194-203. According to Dr. Tucker, “.” *Id.* ¶ 167. In Dr. Tucker’s telling, Dr. Williams’s “.” *Id.* ¶ 194.

Dr. Tucker posited that “.” *Id.* ¶ 197.

Dr. Tucker did not offer any alternate, purportedly un-“flawed” price metric that an antitrust economist could or should use to evaluate companywide ad prices at Facebook during the Class Period. *See generally* Tucker Rpt. ¶¶ 165-70, 192-203. Dr. Tucker did not address, or attempt to square with her opinions, the fact that

. *See id.* Dr. Tucker’s rebuttal report . Tucker Rebuttal Rpt. ¶ 37.

On February 28, 2024, Dr. Tucker sat for deposition. Under oath, she admitted that Tucker Tr. 215:14-16. She admitted that . *Id.* 215:17-24. And when pressed as to what, exactly, she envisioned when , Dr. Tucker revealed a breathtaking proposition: Dr.

Tucker’s

[REDACTED]

[REDACTED]

[REDACTED]. See Tucker Tr. 198:7-212:21.

Dr. Tucker's radical view on ad pricing—[REDACTED]
[REDACTED]—finds no established basis in economic literature, even in connection with quality-adjusted pricing. A quality-adjusted price is just what it sounds like—the price a buyer actually pays, adjusted if applicable for changes in product quality. But Dr. Tucker's conception of "quality-adjusted" price is not a price at all; it is the economic benefit obtained from an advertising purchase. This sum is not paid to Facebook, or any other ad seller. It is not known to Facebook, and it does not impact [REDACTED]



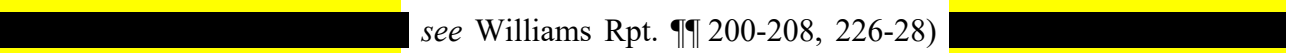





[REDACTED]. The economic world posited by Dr. Tucker—[REDACTED]
[REDACTED]—is not one based on any sort of factual reality or conceptual rigor. It is a made-up metric, concocted for litigation, to avoid the reality that [REDACTED]

This motion seeks to exclude Dr. Tucker's opinions regarding CPM and Facebook ad pricing in her merits and merits rebuttal reports. See Tucker Rpt. ¶¶ 166-70, 192, 194-203; Tucker Rebuttal Rpt. ¶ 37.

ARGUMENT

Federal Rule of Evidence 702 states that "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application

of the principles and methods of the facts of the case.” Dr. Tucker’s opinions regarding Facebook’s ad prices and CPM, memorialized in paragraph 165-70, 192, and 194-203 of her merits report and paragraph 37 of her merits rebuttal report, do not meet this standard.

As noted in the background section of this motion, Dr. Tucker’s merits reports 

 see Williams Rpt. ¶¶ 200-208, 226-28) 
 Tucker Rpt. ¶ 197, 
 *id.* ¶ 194; see generally *id.* ¶ 165-70,
192, 194-203; Tucker Rebuttal Rpt ¶ 37. However, as Dr. Tucker admitted at her deposition, 








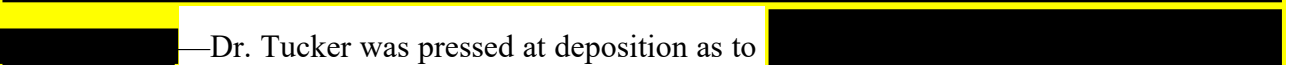








Tucker Tr. 215:14-24 (emphasis added);² see Williams Rebuttal Rpt. ¶¶ 111; Ex. 8 (PX 581 & 582)
at PALM-014094556 


Given this irregularity—


—Dr. Tucker was pressed at deposition as to 


² Objections are omitted throughout this motion.

[REDACTED] This was particularly pressing because Dr. Tucker, [REDACTED]
[REDACTED]
[REDACTED]. See Tucker Rpt. ¶¶ 165-70, 192, 194-203; see also Tucker Rebuttal Rpt. ¶¶ 37.

Upon examination, Dr. Tucker's opinions on price fell apart. That is, Dr. Tucker eventually revealed that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Tucker Tr. 198:70-212:21. [REDACTED]
[REDACTED]:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Tucker Tr. 203:7-12; see also *id.* 201:16-202:3. Dr. Tucker further testified:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Tucker Tr. 204:12-205:25. Eventually, Dr. Tucker’s opinion reached its logical conclusion—that

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Tucker Tr. 207:13-208:5.

Dr. Tucker’s conception of [REDACTED]

[REDACTED]—is junk science. According to Dr. Tucker’s theory, the “price” of a before-work cup of coffee is the value of the extra productivity the caffeine instills in the drinker. The “price” of a pickup truck is a function of how it’s used—days, months, even years after the buyer drives it off the car lot. The “price” of an advertisement depends on the capital structure and employee efficiency of the ad purchaser.

But these aren’t prices—and no established economic methodology holds that they are. They are *values* of a purchased good or service. Every buyer of a hammer from Lowe’s may very well have a different private value for that good—some buyers may use it to build profitable houses, others may wear it as part of a Halloween costume, others still may leave the hammer in their trunk and forget about it—but they all still paid the same price for the hammer: the amount of money they gave to

[REDACTED]

1 Lowe's to walk out with it. The buyers' respective returns from the hammer are not its price, quality-
2 adjusted or otherwise.

3 The concept of a "quality-adjusted price" is a real economic concept. Dr. Tucker's [REDACTED]
4 [REDACTED] concept of pricing is not. Moreover, Dr. Tucker's [REDACTED]
5 [REDACTED]
6 [REDACTED]. See Tucker Rpt. ¶¶ 165-70, 192, 194-203; Tucker Rebuttal Rpt. ¶ 37. When Dr.

7 Tucker [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 The reason Dr. Tucker adopted her private, constructed-for-litigation understanding of "price"
13 for use in Advertiser Plaintiffs' case is evident: [REDACTED]
14 [REDACTED]
15 [REDACTED], see Williams

16 Rpt. ¶¶ 183-96, 199-208, 226-28; Williams Rebuttal Rpt. ¶¶ 110-11, [REDACTED]
17 [REDACTED] Tucker Tr.
18 201:3-4. To sum things up, Dr. Tucker's own testimony suffices:

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Tucker Tr. 200:21-201:6 (emphasis added).

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 Tucker Tr. 215:14-16.

Dr. Tucker's attempt to run from an obviously correct metric for evaluating Facebook ad prices [REDACTED] is junk science. The Court should exclude it as unreliable under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

CONCLUSION

For the foregoing reasons, Advertiser Plaintiffs respectfully request that paragraphs 165-70, 192, and 194-203 of the Advertiser Merits Report of Catherine Tucker, and paragraph 37 of the Advertiser Merits Rebuttal Report of Catherine Tucker, as well as any related testimony, be excluded from this case.

Dated: April 5, 2024

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FILER ATTESTATION

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: April 5, 2024

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